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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,419	10/20/2003	Andrew J. Baskerville	147.04	3836

33321 7590 05/10/2005

MAGUIRE LAW OFFICE  
423 E ST.  
DAVIS, CA 95616

EXAMINER
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LOBO, IAN J

ART UNIT	PAPER NUMBER
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3662

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/690,419

**Applicant(s)**

BASKERVILLE ET AL.

**Examiner**

Ian J. Lobo

**Art Unit**

3662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-10 and 12-14 is/are allowed.
- 6) ☒ Claim(s) 11 and 15-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 18, 2005 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fessenden.

4. Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al.

Lee et al discloses a system for dampening underwater energy from an energy source. Note that Fig. 3A shows bubble producing elements 111 positioned in a vertically oriented setup.

Fessenden discloses a system for dampening underwater energy from an energy source (16). The system includes bubble producing elements 35 positioned in a vertically oriented manner.

The difference between claims 11 and 15 and the systems of Lee et al and Fessenden is the claims now specify "substantially surrounding all sides of" or "substantially surrounding" the stationary project area or project, respectively. Lee et al and Fessenden do not disclose surrounding all sides of the project or project area with the bubble producing elements.

However, it is arguable that the circumstances surrounding the Lee et al and Fessenden systems include bubble producing elements in specific locations for specific purposes. This does not mean that the bubble producing elements could not be utilized in other more inclusive areas. In fact, one of ordinary skill in the art would clearly find it obvious to surround the project or area where dampening of underwater energy is required if the specific circumstances would dictate. Specifically, it would be obvious to one of ordinary skill in the art to utilize the bubble producing elements 35 of Fessenden around the entire area of the ship or area of noise source especially in light of the teaching on col. 1, lines 30-45. Similarly, it would be obvious to one of ordinary skill in the art to utilize the bubble producing elements of Lee et al around the energy source if the energy source interference is to be dissipated in all directions. Claims 11 and 15 are so rejected.

With respect to claim 16, see feed pipe 34 of Fessenden that reads on the claimed "spine" and is located "substantially perpendicular" with respect to the waterline. Specifically, the top part of the spine is "substantially perpendicular" with the waterline.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by Arnoldi ('466).

Note on Fig. 1 of Arnoldi, a spine (10) is shown having first and second bubble producing units (18). The spine is placed in a bed of a waterway. The structure claimed in claim 17 reads upon the structure of Arnoldi since a bed of a waterway is not perfectly horizontal, and thus the spine placed upon a non-perfectly horizontal bed would inherently include bubble producing units "vertically spaced or oriented from each other especially along a vertical contoured bed.

***Allowable Subject Matter***

7. Claims 5-10 and 12-14 are allowed.

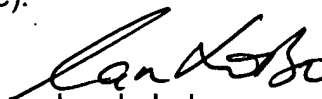
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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ian J. Lobo whose telephone number is (571) 272-6974.

The examiner can normally be reached on Monday - Friday, 6:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas H. Tarcza can be reached on (571) 272-6979. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ian J. Lobo  
Primary Examiner  
Art Unit 3662